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**General Teamsters, Warehousemen and Helpers Union, Local 890, affiliated with International Brotherhood of Teamsters, AFL-CIO and Basic Vegetable Products, L.P. Case 32-CB-5120-1**

August 27, 2001

**DECISION AND ORDER**

BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE  
AND WALSH

On May 24, 2000, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order as modified.<sup>2</sup>

The Respondent Union has represented the Employer's production, warehouse, and maintenance employees for more than 40 years pursuant to successive collective-bargaining agreements. Following the expiration of the most recent agreement, on April 1, 1999,<sup>3</sup> the Union called a strike on July 7 in which about 750 unit employees participated. The Employer thereafter hired replacement employees, who were converted to permanent replacements on September 21.

On or about July 14, the Respondent instructed its picket line captains and picketers to have a video camera available at all times. According to the Respondent, the purpose of the cameras was to record any violence or violations of the law on the part of the Employer and to

record events on the picket line in the event of any allegations of misconduct on the part of picketers. On numerous occasions in July and August, picketers used the cameras to videotape vehicles entering and exiting the Employer's facility. The video cameras were visibly aimed at vehicle license plates as well as the vehicles and their occupants. On one occasion during the first month of the strike, a woman with a bullhorn additionally called out each license plate number as vehicles entered the plant. The Respondent's witnesses conceded that picketers sometimes shouted at replacement employees including shouting obscenities.

The Respondent's representatives testified that replacement employees engaged in numerous acts of intimidation and violence and that the purpose of the videotaping was to document this misconduct. However, there is no evidence that any misconduct by any replacement employee was, in fact, videotaped. Rather, the only videotape submitted in evidence depicts individuals in automobiles, initially focusing on their faces and then zooming to the vehicle license plate.

The judge found that the Respondent violated Section 8(b)(1)(A) by videotaping replacement employees, their vehicles, and license plates as they entered and exited the Charging Party's facility. In reaching this conclusion, the judge carefully considered all of the relevant circumstances. In particular, the judge relied on the fact that picketers aimed cameras at vehicle license plates and used a bullhorn on one occasion to call out the license plate numbers of each vehicle as it was being videotaped crossing the picket line.<sup>4</sup> The judge also noted that the videotaping was accompanied by abusive remarks by the picketers directed at the replacement employees. The judge recognized that there may be legitimate reasons for the use of video cameras by unions at picket lines. However, the judge found that no valid reason had been offered for the Respondent's ostentatious recording of the license plate number of *each* car entering and exiting the plant at shift change times. Accordingly, the judge found that under all of the circumstances of the case, the Respondent's videotaping was unlawful.

We agree with this finding. The Board has found that videotaping, or creating the appearance of videotaping an employee, accompanied by abusive remarks from union

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> We shall modify par. 2(a) of the judge's recommended Order to address in the notice employees as well as members and to require notice posting at the Respondent's meeting halls and business offices. We shall omit the requirement in the same paragraph relating to notice mailing in the event that the Respondent goes out of business or closes the facility involved in this proceeding. See, e.g., *Laborers Local 1184 (Nicholson Rodio)*, 332 NLRB No. 124 (2000).

<sup>3</sup> Unless otherwise stated, all dates hereafter are in 1999.

<sup>4</sup> As stated at fn. 8 of the judge's decision, the Respondent's videotaping was contemporaneous with acts of mass picketing by the Respondent. The Respondent's mass picketing was the subject of a temporary restraining order issued by the Monterey County Superior Court on July 14. See *Basic Vegetable Products v. General Teamsters, Warehousemen and Helpers Union, Local No. 890*, Case No. M-45003. The picketing also was the subject of an injunction pursuant to Sec. 10(l) of the Act in *Scott v. Teamsters Local 890*, No. C 99-20735 (N.D. Cal. Aug. 9, 1999).

picketers, may reasonably tend to restrain or coerce the targeted employee in the exercise of his or her Section 7 rights.<sup>5</sup> In *Interstate Cigar Co.*,<sup>6</sup> the Board stated that “the photographing of employees by pickets, or the recording of license plate numbers, is not by itself violative of Section 8(b)(1)(A) of the Act. It is only when such conduct takes place in conjunction with other actions indicating that a union might react adversely to employees who [fail to] honor a picket line that such conduct exceeds the boundaries of permissible action.” The Board has consistently applied these principles to find that photographing or videotaping license plates and/or occupants of vehicles crossing a picket line, when coupled with abusive remarks or other conduct having a reasonable tendency to instill fear of retribution in the minds of replacement or crossover employees, violates Section 8(b)(1)(A).<sup>7</sup>

Applying these principles to the facts of this case, we find, in agreement with the judge, that the Respondent’s videotaping of replacement employees entering and leaving the Employer’s facility, and their vehicle license plates, under all the circumstances of this case, reasonably tended to restrain or coerce employees in the exercise of their Section 7 rights. As discussed above, the videotaping was conducted in such a way as to make clear to employees that the Respondent was recording their license plate numbers, including one instance in which the numbers were shouted out using a bullhorn. In addition, the videotaping was accompanied by abusive remarks and took place against the backdrop of the Respondent’s unlawful mass picketing. Despite the Respondent’s assertions that the purpose of the videotaping was to document acts of misconduct by replacement employees and by the Employer, there is no evidence that the video-

taping was in fact used for this purpose. In light of the Respondent’s routine videotaping of replacement employees entering and leaving the Employer’s facility, at times when no violence or intimidating acts were taking place, employees could reasonably believe, under all the circumstances of this case, that the Respondent was videotaping them in order to learn their identities, and that the Respondent might “react adversely” to their failure to honor its picket line.<sup>8</sup>

### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, General Teamsters, Warehousemen and Helpers Union, Local 890, affiliated with International Brotherhood of Teamsters, AFL-CIO, King City, California, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a):

“(a) Within 14 days after service by the Region, post at its business offices and meeting halls copies of the attached notice marked ‘Appendix.’<sup>9</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous

<sup>5</sup> *Culinary Workers Local 226 (Casino Royale, Inc.)*, 323 NLRB 148 (1997) (picketers videotaped casino “greeter” and pretended to videotape her, while making harassing anti-Semitic remarks).

<sup>6</sup> 256 NLRB 496, 500-501 (1981) (no violation, where credited testimony did not establish that union agents engaged in any photographing or recording of license plate numbers, or threatened employees who crossed picket line).

<sup>7</sup> *Auto Workers Local 695 (T.B. Wood’s)*, 311 NLRB 1328, 1336 (1993) (picketers also assaulted employees, explicitly threatened them with physical harm and damaged their property, and engaged in unlawful mass picketing); *Dover Corporation, Norris Division*, 211 NLRB 955, 958 (1974), *enfd.* as modified 535 F.2d 1205 (10<sup>th</sup> Cir. 1976), *cert. denied* 429 U.S. 958 (1976) (picketers took down license plate number and photographed employee crossing picket line, following encounter in which picketers intimated that employee’s husband’s might react adversely to her conduct in crossing the picket line).

Although in these cases the union respondents also engaged in separate acts of violence or explicit threats of retaliation, the Board’s decisions do not indicate that a union’s picket line videotaping must be found lawful in the absence of such acts or explicit threats, regardless of the circumstances.

<sup>8</sup> *Interstate Cigar Co.*, *supra*, 256 NLRB at 501. See also *Casino Royale*, *supra*, 323 NLRB at 148; *T.B. Wood’s*, *supra*, 311 NLRB at 1336; *Dover Corporation*, *supra*, 211 NLRB at 958.

The dissent asserts that the judge erred in finding that the Respondent’s videotaping was unlawful. According to the dissent, the judge erroneously applied a per se rule under that videotaping of replacement employees’ license plate numbers is inherently coercive. Our dissenting colleague also asserts that there is no evidence that the videotaping was accompanied by coercive words or actions, and that the Respondent’s videotaping was justified by the violence and threats to which picketers were subjected.

Contrary to our dissenting colleague, the judge did not apply a per se rule but instead carefully considered all the circumstances of the case, including the manner in which the videotaping was conducted, the shouting out of license plate numbers on one occasion, and the abusive remarks made by the picketers to replacement employees. In affirming the judge’s finding of a violation of Sec. 8(b)(1)(A), we too have carefully reviewed all of the circumstances of this case. In our view, our dissenting colleague fails to give these circumstances the weight they are due. Likewise, the judge implicitly rejected the Respondent’s contention that it was legitimately documenting misconduct by replacement employees based on the undisputed evidence that the Respondent in fact recorded not a single incident of misconduct but instead routinely recorded the identities and license plates numbers of the replacement employees. We agree with this finding as well.

<sup>9</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material."

Dated, Washington, D.C. August 27, 2001

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Peter J. Hurtgen,	Chairman
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John C. Truesdale,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER WALSH, dissenting.

Contrary to the majority, I would not find the Union's activity of videotaping replacement employees, their vehicles, and their vehicles' license plates while these employees were entering and exiting the employer's facility to be violative of Section 8(b)(1)(A). The Union's purposes for videotaping were lawful, and the videotaping did not have the reasonable tendency to coerce or restrain employees.

The employer, BVP, is in the business of processing and distributing vegetable products. The Union has represented BVP's production, warehouse, and maintenance employees for at least 40 years pursuant to successive collective-bargaining agreements. On July 7, 1999, approximately 750 unit employees began an economic strike after the parties failed to reach agreement on a successor contract, and picketing commenced at BVP's facilities.

BVP's principal facility consists of several buildings located on Airport Road, and is accessed by a private, gated entrance. BVP also maintains a shipping and receiving warehouse facility on San Antonio Road located near the principal facility. Within a week of the strike's commencement, BVP obtained a restraining order limiting the number and placement of picketers, as a result of which the picketers generally stationed themselves at the Airport Road entrance to BVP's facility. BVP ensured around-the-clock surveillance of its premises through the use of 28 security guards. These guards were equipped with video cameras.

At the start of the strike, the Union appointed picket captains to ensure discipline on the picket line and that the picketers honored any restraining orders, to contact the police in the event of any incidents and to document any misconduct engaged in by others. The Union in-

structed the picket captains and picketers to have a video camera available at all times for the purpose of recording any threats or violence by replacement workers or other violations of law by BVP. The police had specifically advised the Union that it was particularly helpful in documenting misconduct by others to identify the license plates of any offending individuals' vehicles. The Union also requested the picket captains and picketers to use the video cameras to gather corroborating evidence in the event of unwarranted accusations against the picketers. The Union did not have any video cameras of its own, but instead relied on picketers to use their personal video camera equipment.

The videotaping of replacement employees' vehicles by the picketers appears to have occurred primarily at the Airport Road entrance to BVP's facility. It is unclear how often this videotaping occurred, but at times the picketers focused a video camera on the individuals inside the vehicles entering and exiting the facility as well as the vehicles' license plates. On at least one occasion a picketer with a bullhorn yelled out the license plate numbers of vehicles as they entered the BVP gate.<sup>1</sup> The Union did not systematically review the tapes, and did not obtain many of the tapes from the picketers until requested to do so for the hearing before the administrative law judge.

There is no evidence that during the videotaping by the Union, or at any other time, the picketers made any threatening statements to replacement workers as they entered or exited BVP's facility, or that they made threats to replacement workers at any other locations. There is also no evidence that the picketers made any threatening gestures or engaged in any other coercive or threatening misconduct.<sup>2</sup>

The strikers were, however, the victims of various threats and acts of physical violence. In addition to other acts of misconduct, a shotgun was displayed and pointed at the picket line; a beer bottle was thrown at the picket line; a replacement worker grabbed an elderly picketer; a man took a tire iron from his car trunk and threatened to beat the picketers with it; a big rig bore down on the picketers, turning at the last second to avoid hitting them; and replacement workers chased two strikers, beating one and smashing the video camera of the other. Although the Union did not videotape these incidents, pick-

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<sup>1</sup> In three instances strikers told BVP's strike coordinator Feebeck that they had his license plate number. The judge found that these remarks were not attributable to the Union, were made to a member of management, and were, so far as the evidence shows, not heard by any replacement employee.

<sup>2</sup> The replacement workers and the picketers traded obscenities, but there is no evidence that any of the picketers' insults contained threats.

eters were able to write down or remember some of the vehicle license plate numbers and several of the offenders were reported to the police.

The judge concluded that the Union's videotaping of replacement workers' license plate numbers violated Section 8(b)(1)(A) based on her assumption that the replacement workers would necessarily fear that the Union would use such information to punish them in some unlawful fashion for not honoring the picket line. In so ruling, despite the absence of any evidence that the videotaping was accompanied by coercive words or actions, the judge essentially applied a per se rule that videotaping of replacement employees' license plate numbers is inherently coercive regardless of the surrounding circumstances.

Where union photographing is alleged to violate Section 8(b)(1)(A) the Board has not employed a per se rule, but instead has used an "all the circumstances" approach. "[T]he photographing of employees by pickets . . . is not by itself violative of Section 8(b)(1)(A) of the Act. It is only when such conduct takes place in conjunction with other actions indicating that a union might react adversely to employees who [do not] honor a picket line that such conduct exceeds the boundaries of permissible action." *Interstate Cigar Co.*, 256 NLRB 496, 500-501 (1981). Accord: *Culinary Workers Local 226 (Casino Royale, Inc.)*, 323 NLRB 148, 161 (1997) (videotaping accompanied by threats of bodily harm); *Auto Workers Local 695 (T. B. Wood's)*, 311 NLRB 1328, 1336 (1993) (videotaping accompanied by numerous threats and physical assaults).<sup>3</sup>

<sup>3</sup> The Board had previously treated union photographing of employees differently depending on whether an unfair labor practice proceeding or a representation proceeding was involved, without providing any rationale for this distinction. With respect to union photographing in the representation case context, in *Pepsi-Cola Bottling Co.*, 289 NLRB 736 (1988), and *Mike Yurosek & Son, Inc.*, 292 NLRB 1074 (1989), the Board eschewed an "all the circumstances" approach for a standard that provides that, in the absence of a valid explanation, photographing of employees by a union amounts to objectionable conduct. The Board overruled *Pepsi-Cola Bottling* and its progeny in *Randell Warehouse of Arizona*, 328 NLRB No. 153 (1999), enf. denied 252 F.3d 445 (D.C. Cir. 2001). *Randell* involved the issue of whether a union's videotaping of employees leaving the employer's facility constituted objectionable election misconduct. The Board appropriately rejected the application of a per se rule, and examined the context in which the videotaping occurred to determine whether the videotaping was objectionable. As the Board held, "the Union's conduct, in photographing employees . . . absent evidence of any express or implied threats or of other coercion, was not objectionable." (Slip op. at 5.) Although the United States Court of Appeals for the D.C. Circuit denied enforcement of the Board's order in *Randell*, the court did so based on its conclusion that the Board had not adequately taken into consideration the circumstances surrounding the union's photographing, including the effects that various alleged threats by third-party individuals might have had on how the employees would perceive the union's photographing. 252

Applying that analysis here, I first find that the Union's purpose for videotaping the replacement workers, their vehicles, and license plate numbers were entirely lawful. As stated above, the Union's reasons for collecting this information were to assist in recording any threats or violence by replacement workers as well as violations of law by BVP, and to gather corroborating evidence in the event of unwarranted accusations against the picketers. The police had even specifically recommended that the Union record the license plate numbers of vehicles in order to help identify those who might commit misconduct.<sup>4</sup> As it turned out, the picketers were subjected to numerous threats and acts of physical violence. Although the picketers did not capture these incidents on videotape, they did obtain the license plate numbers of some of the offenders and were able to report several of the offenders to the police.<sup>5</sup>

The Union's videotaping was also unaccompanied by statements, gestures, or other conduct that explicitly or implicitly suggested that there would be retribution for not honoring the picket line.<sup>6</sup> The videotaping also did not occur in the context of picket line violence that might

F.3d at 449. The court's analysis thus implicitly supports the Board's use of an "all the circumstances" approach in determining whether a union's photographing of employees constitutes objectionable conduct.

<sup>4</sup> In concluding that the Union offered "no valid reason" for videotaping the license plate numbers of replacement workers, the judge ignored these undisputed facts. Even if the Board were to apply the standard erroneously used by the judge here, that a union's photographing of employees will be deemed unlawful in the absence of a valid reason for the photographing, it would still be required to find the videotaping lawful given that the Union had several valid reasons for videotaping. Cf. *Stark Ceramics, Inc.*, 155 NLRB 1258, 1269 (1965), enf. 375 F.2d 202 (6<sup>th</sup> Cir. 1967) (no violation of Act where employer photographed picket line for purposes of collecting evidence of mass picketing and violence).

<sup>5</sup> My colleagues suggest that because the Union failed to capture these acts of violence on videotape, documenting such acts was not a purpose of the videotaping. There is no record evidence, however, that the Union was fortunate enough to have a video camera available and operating when the acts of violence occurred except in one instance, and that was when replacement workers chased and beat the picketer attempting to operate the video camera and smashed his camera. It is understandable why the Union would have failed to capture that incident on video. In any event, it is not the Union's burden to establish that it had a legitimate reason for videotaping picket line activity. Rather, it is the General Counsel's burden to demonstrate that the videotaping had a reasonable tendency to coerce those being filmed.

<sup>6</sup> Although my colleagues, in their effort to suggest that some degree of coercion was present, emphasize that "abusive remarks" were made by the picketers, there is no evidence that those remarks contained threats or consisted of anything more than mere obscenities. Obscenities are not an uncommon occurrence on a picket line, where emotions run high, and they are not alone coercive. See *Medite of New Mexico, Inc.*, 314 NLRB 1145, 1162 (1994) (Board adopted judge's finding that striker's shouting of obscenities at an employee was not grounds for denying reinstatement because such conduct does not reasonably tend to coerce or intimidate employees).

tend to cause replacement workers to feel coerced by the collection of information about their identity by the strikers.

Accordingly, as the Union's purposes for videotaping replacement workers, their vehicles, and license plate numbers were lawful, and the videotaping was not accompanied by words or conduct that would have a reasonable tendency to cause the employees to fear retribution for not honoring the picket line, I conclude that the videotaping was not coercive and thus did not violate Section 8(b)(1)(A). I would therefore dismiss the complaint.

Dated, Washington, D.C. August 27, 2001

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Dennis P. Walsh,

Member

#### NATIONAL LABOR RELATIONS BOARD

*Olivia Garcia Boulton, Esq., for the General Counsel.*

*Duane B. Beeson, Esq., Beeson, Tayer & Bodine, of San Francisco, California, for Respondent, General Teamsters, Warehousemen and Helpers Union, Local 890, affiliated with International Brotherhood of Teamsters, AFL-CIO.*

*Marcia A. Ross, Esq., Jory, Peterson, Watkins & Smith, of Fresno, California, for the Charging Party, Basic Vegetable Products, L.P.*

#### DECISION

##### STATEMENT OF THE CASE

MARY MILLER CRACRAFT, Administrative Law Judge. This case was tried in Salinas, California, on January 26, 2000. The charge was filed by Basic Vegetable Products, L.P. (BVP or the Employer) on July 30, 1999,<sup>1</sup> and the complaint was issued September 28. At issue is whether General Teamsters, Warehousemen and Helpers Union, Local 890, affiliated with International Brotherhood of Teamsters, AFL-CIO (the Union or Respondent) violated Section 8(b)(1)(A) of the Act<sup>2</sup> during an economic strike by videotaping replacement employees and their vehicles and license plates when replacement employees reported to work.<sup>3</sup>

All parties were afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue the merits of their respective positions. On the entire record, including my observation of the demeanor of

the witnesses,<sup>4</sup> and after considering the briefs filed by all counsel, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION AND LABOR ORGANIZATION STATUS

BVP is a California limited partnership with an office and place of business in King City, California, where it is engaged in the processing and nonretail distribution of vegetable products, including onion and garlic products. During the 12 months preceding issuance of the complaint, BVP sold and shipped goods valued in excess of \$50,000 directly to customers located outside the State of California. The Union admits and I find that BVP is an employer engaged in commerce with the meaning of Section 2(2), (6) and (7) of the Act. The Union admits and I find that it is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. Facts

The Union has represented BVP's production, warehouse, and maintenance employees for at least 40 years pursuant to successive collective-bargaining agreements. After the most recent agreement expired on April 1, the parties continued bargaining but failed to reach agreement. After 2-week advance notice, on July 7, about 750 unit employees began an economic strike.<sup>5</sup> Ultimately BVP hired 650 temporary replacement employees. On September 21, the replacement employees were converted from temporary to permanent status.<sup>6</sup>

BVP's principal facility, consisting of a number of buildings, is located on the north<sup>7</sup> side of Airport Road and accessed by a private, gated entrance. Pursuant to a temporary restraining order<sup>8</sup> governing the number and placement of picketers, the strikers typically gathered across the street from BVP's principal facility Airport Road entrance in an area on the south side of Airport Road referred to as "the Hill." BVP also maintains a shipping and receiving warehouse facility referred to as the

<sup>4</sup> Credibility resolutions have been made based upon a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

<sup>5</sup> The strike was ongoing at the time of this hearing.

<sup>6</sup> Turnover of replacement employees during the strike was around 30 to 40%. After onion dehydration was completed on December 7, replacement employees were laid off. About 350 employees remained in the production, warehouse, and maintenance departments during the down season.

<sup>7</sup> Based upon the maps introduced in evidence, it appears that the relevant portion of Airport Road proceeds roughly from east southeast to west northwest. For simplicity's sake, it will be considered as proceeding from east to west.

<sup>8</sup> An initial temporary restraining order was issued on July 14 in Monterey County Superior Court. On August 9, the United States District Court for the Northern District of California entered a temporary injunction pursuant to Sec. 10(l) of the Act prohibiting mass picketing at various hotels in King City and Soledad in violation of Sec. 8(b)(4)(i) and (ii)(B) of the Act.

<sup>1</sup> All dates are in 1999 unless otherwise indicated.

<sup>2</sup> Sec. 8(b)(1)(A) prohibits a labor organization, inter alia, from restraint, or coercion of employees' rights to organize or act collectively for their mutual aid or protection or their right to refuse to engage in such activities.

<sup>3</sup> Other allegations in the complaint were the subject of a bilateral settlement agreement between the parties. These allegations were not litigated before me and are hereby severed.

East Ranch, located on San Antonio Road south of the principal facility. When the strike began, BVP arranged that 28 security guards would provide around-the-clock surveillance of its premises.

BVP's guards as well as some of the picketers were equipped with video cameras.<sup>9</sup> On approximately July 14, the Union instructed picket captains<sup>10</sup> and picketers to have a video camera available at all times in order to record any violence or threats or other potential violations of the law by the Employer.<sup>11</sup> The Union had been advised by police officials that it was especially helpful in this regard to identify the license plate of any offending individuals' vehicles. In addition, the Union instructed picket captains and picketers that the video cameras would afford security or safety for the picketers. Finally, the Union urged the use of video cameras in order to provide corroborating evidence in the event of unwarranted allegations against picketers or the Union. No specific instructions were given to picketers equipped with video cameras regarding the length of time for recording events, the manner of labeling tapes, or storage of tapes. However, there is no dispute that both union representative Conle and business representative Garcia were aware that sometimes the strikers videotaped the vehicles of replacement employees as they entered and exited the principal facility.<sup>12</sup> The Union did not systematically review the tapes and did not obtain many of the tapes from the picketers until requested to do so for this proceeding.

Phillip Ross Feebeck, one of BVP's strike coordinators,<sup>13</sup> first noticed picketers with video cameras about the second week of July. He observed these video cameras on numerous occasions during the first month of the strike in the Hill area as well as on the north side of Airport Road just west of the BVP gate on a sidewalk. Feebeck did not recognize any of the picketers with video cameras except Ishmael Andrade.<sup>14</sup> Usually, when Feebeck saw video cameras, he could also identify either strike captains or Fritz Conle, union representative, or Steve

Garcia, business representative, also in the area. Feebeck usually arrived at the plant and stayed at the plant before and after each shift change, which occurred at 7 a.m. and 7 p.m.

At these times, Feebeck witnessed the union picketers aiming their video cameras either at the crowd of picketers or at the bumper level of passing automobiles.

Specific examples of picket line video taping were provided as follows:

1. On one occasion during the first month of the strike, when reporting to work at BVP's principal facility on Airport Road, Francisca Gutierrez Aguilar, human resources clerk, a nonbargaining unit position, noticed one of the strikers equipped with a video camera standing on the south side of Airport Road, just east of the Hill. Traffic entering the BVP principal facility was backed up due to security checks conducted by BVP security guards on each entering vehicle. Accordingly, Aguilar was stopped or moving slowly a short distance east of the entry. Aguilar noticed that the camera was aimed at each entering vehicle towards the license plate.<sup>15</sup> Aguilar also heard a woman with a bullhorn yelling out each license plate number.<sup>16</sup> There were approximately 50 picketers in the Hill area at this time.

2. On a later occasion, as Aguilar left work, she noticed striker Andrade with a video camera aimed at the corner of Airport Road at the intersection of Bittersweet Road about a mile east of BVP's principal facility. No other persons were with Andrade. As Aguilar made the turn from Airport Road to Bittersweet Road, Andrade aimed the camera at her car. As she completed her turn, Andrade aimed the camera at the next car behind Aguilar.

3. Michael Allen Howard, manager of human resources, exited the principal facility in late August around 7 p.m. and saw Andrade on the south side of Airport Road with a video camera pointed at each exiting car as it passed by him. Other picketers were present.

4. On the following evening, Howard observed Andrade on the north side of Airport Road just west of the exit gate, once again with a video camera aimed at the cars as they exited.

Striking employee Teresa Cox testified that in early August she began bringing her husband's video camera to the picket line and recording cars coming to the principal facility and leaving the principal facility. She made such tapes several times each week for a few weeks. The purpose of the taping was to record instances of alleged harassment from replacement employees. On one occasion, Cox witnessed a replacement employee throw a beer bottle at one of the picketers. However, she did not videotape this occurrence. On another occasion, Cox saw a replacement employee point a gun at the crowd. Cox had her video camera at that time but was too frightened to record

<sup>9</sup> BVP purchased five video cameras for use by the guards. The stated purpose for use of these cameras was to record any blocking of entrances or other potentially restrainable activities. The Union did not own any video cameras. However, various picketers utilized their personal video camera equipment.

<sup>10</sup> Picket captains were present to ensure discipline on the picket line, to make sure picketers do not violate the terms of any restraining orders, and to call the police and document any misconduct. Additionally, picket captains were responsible for conveying the Union's request that video cameras be present on the picket line.

<sup>11</sup> Specific instances of such activity included a beer bottle thrown at the picket line, a shotgun displayed and pointed at the picket line, a female replacement employee grabbed an elderly picketer, a man grabbed a tire iron from his trunk and threatened the strikers, and a big rig drove toward the strikers, turning at the last minute to avoid hitting them. None of these events were taped. However, the strikers were able to write down or remember vehicle license plates and several of the offending persons were reported to police.

<sup>12</sup> The Union admits that Conle and Garcia are agents of the Union within the meaning of Sec. 2(13) of the Act.

<sup>13</sup> Feebeck usually worked for BVP at its Modesto location. However, beginning in February, he assumed duties as strike coordinator in preparation for a potential strike at the King City location.

<sup>14</sup> The Union admits that Andrade was an agent within the meaning of Sec. 2(13) for the limited purpose of videotaping.

<sup>15</sup> Aguilar could not identify the striker with the camera because she did not see a face. She believed that the striker was a tall man.

<sup>16</sup> Union agent Conle testified that he was not present when any such activity occurred. Had he been present, he opined, he would have instructed such a picketer to cease such activity.

the event.<sup>17</sup> Cox agreed that the strikers yelled at the replacement employees, sometimes shouting obscenities.

One tape recording was submitted in this proceeding. The tape recording depicts individuals in automobiles, initially focusing on the faces, and then zooming to the license plate.

### B. Contentions

Counsel for the General Counsel argues that the Union authorized the picket line and use of video cameras at the picket line. Counsel avers that no specific instructions were given to picketers as to how to use the video cameras. Rather, the picketers used their cameras indiscriminately, sometimes taping strike replacements and the vehicles in which they were riding in the presence of union or business representatives and picket captains who observed this behavior. Because the Union admits that it authorized videotaping, counsel argues that any misconduct in the method or manner of videotaping by picket captains or pickets is attributable to the Union and it is not necessary to establish the individual identity of each videotaping picket.<sup>18</sup>

Turning to whether the videotaping activities coerced and restrained employees, counsel asserts that videotaping or creating the appearance of videotaping, when accompanied by abusive remarks, reasonably tended to restrain and coerce the targeted employee.<sup>19</sup> Moreover, counsel contends that, although it is not necessary to prove actual intent to restrain and coerce such evidence is present here.<sup>20</sup> Having established that the clear import of the videotaping activity was to instill fear of retribution, counsel asserts that the burden shifts to the Union to estab-

lish lawful reasons for engaging in the videotaping activity. Counsel asserts that the Union did not establish that its asserted reason for videotaping, to record replacement employee misconduct, was proven.

Counsel for the Charging Party avers that the Union's asserted justifications for videotaping are insufficient to avoid liability. For instance, counsel notes that no authority supports the Union's assertion that its videotaping in anticipation of potential misconduct justifies such conduct. Rather, counsel asserts that such activity tends to create fear of potential reprisals.<sup>21</sup> Moreover, counsel points out that when instances of potential misconduct by replacement employees did, in fact, occur, the Union failed to tape record the event. Finally, counsel asserts that the actual purpose of the videotaping is shown by repeated focusing on faces and license plates of replacement employees when nothing else was occurring. This evidence proves, according to counsel, that the real purpose of the taping was to instill fear of retaliation in the minds of replacement employees.

Counsel for the Union urges that the videotaping must be considered as a separate issue from the videotaping which was accompanied by striker's comments alleged to be threatening. As to the videotaping which was unaccompanied by any remarks, counsel avers that as it is not unlawful for a union to videotape employees during an organizational campaign as a means by which to determine and identify and leanings of employees,<sup>22</sup> it is also not unlawful for a union to videotape picket line activity in order to combat false charges against them. In this respect, counsel asserts that videotaping, without more, does not violate Section 7 rights.<sup>23</sup> Further, counsel emphasizes that nothing more did occur, in that there is no evidence that the Union sought to identify or locate the residences of those persons videotaped. Counsel also notes that the police were aware of and encouraged the video taping. Accordingly, counsel concludes that the videotaping which was unaccompanied by other words or actions does not infringe on employees' Section 7 rights.

Finally, counsel turns to the single instance in which an unidentified female called out license plate numbers during videotaping. Counsel argues that this activity did not violate Section

<sup>17</sup> Cox recited several other instances of similar conduct by strike replacement employees toward strikers as did striker Eduardo Moran, who was chased and beaten by replacement employees. A striker accompanying Moran had a video camera but it was smashed by replacement employees.

<sup>18</sup> Counsel relies upon *Local 248, Meat & Allied Food Workers (Milwaukee Independent Meat Packers Assn.)*, 222 NLRB 1023, 1034 (1976), and cases cited therein (where overall facts clearly reveal that misconduct was caused by pickets, it is unnecessary to determine the exact picket who caused the misconduct). Counsel also cites *Boilermakers Local 1 (Union Oil)*, 297 NLRB 524, 526 (1989) (union which maintains control over picket line and properly disavows and corrects misconduct not responsible for such misconduct).

<sup>19</sup> Counsel relies specifically on *Culinary Workers Local 226 (Casino Royale)*, 323 NLRB 148 (1997) which sets forth this standard. Counsel also notes that during an organizing campaign, unions may photograph employees as a means by which to carry out legitimate objectives. However, if such photography is accompanied by threatening statements which could reasonably cause fear of future reprisals, such conduct may be found objectionable. *Randell Warehouse of Arizona*, 328 NLRB No. 153, slip op. at 5 (1999). Counsel further notes that absent proper justification, employer photography or videotaping of employees engaged in protected activity is unlawful. *F.W. Woolworth Co.*, 310 NLRB 1197 (1993) (photographing in the mere belief that something may happen does not justify photography when balanced against the tendency to interfere with right to engage in concerted activity).

<sup>20</sup> Counsel cites *Casino Royale, supra*, 323 NLRB at 148 (videotaping accompanied by abusive remarks evidenced actual intent to coerce the targeted employee); *Dover Corp., Norris Div.*, 211 NLRB 955, 958 (1974) (picture-taking accompanied by appearance of writing down license number of cars calculated to instill a fear of retribution because of refusal to join strike).

<sup>21</sup> Counsel cites *Waco, Inc.*, 273 NLRB 746, 747 (1984) (in the absence of proper justification, photographing pickets tends to intimidate and implant fear of future reprisals); *Flambeau Plastics Corp.*, 167 NLRB 735, 743 (1967), *enfd.* 401 F.2d 128, 136 (7<sup>th</sup> Cir. 1968) (employer may not photograph peaceful picketing at its premises).

<sup>22</sup> Counsel cites *Randell Warehouse of Arizona*, 328 NLRB No. 153 (1999), overruling *Pepsi-Cola Bottling Co.*, 289 NLRB 736 (1988) (*Pepsi-Cola* held that absent any legitimate explanation from union, employee Sec. 7 rights intruded upon by videotaping them as they left the plant during an organizational drive).

<sup>23</sup> Counsel asserts that with the overruling of *Pepsi Cola, supra*, prior Board law to the effect that photographing of replacement employees' license plates numbers by itself is not violative has now been reinstated, citing specifically *Interstate Cigar Co.*, 256 NLRB 496, 500-501 (1981) (dicta: photographing of employees by pickets or recording their license plate numbers is not by itself violative. It is only when such conduct occurs in a context with other actions indicating that a union might react adversely to replacement employees when conduct exceeds bounds of permissible action).

7 because no additional evidence indicates an effort to restrain or coerce. Rather, counsel urges, this isolated incident constituted merely an announcement consistent with the videotaping of the automobile. Counsel additionally notes that any inference of coercive intent is negated by the Union's published strike conduct rules which specifically prohibit threatening replacement employees.

### C. Analysis

The Union admits that it authorized use of video cameras by its picketers at the picket line. I find that Union agents were aware that the picketers were utilizing their video cameras to record replacement employees and their vehicles and vehicle license plates as the replacement employees came to and left work at the main production facility.<sup>24</sup> I further find that the Union did not attempt to stop such activities and must, accordingly, bear the burden of any tendency these actions may have had to restrain or coerce the targeted replacement employees.<sup>25</sup>

Turning to the issue of tendency to restrain or coerce, I note that in *Randell*, the Board narrowly tailored its holding to the representation case setting and held only that union photographing or videotaping of employees engaged in protected activities during an election campaign, without more, does not interfere with employee free choice.<sup>26</sup> The Board specifically stated that *Randell* did not involve a union photographing employees in connection with picket line activities and expressed no opinion regarding whether such photographing might be coercive.<sup>27</sup>

However, it appears clear that use of a video camera, when accompanied by abusive remarks, tends to restrain or coerce employees. In *Casino Royale*, while a female greeter was stationed at the main entrance to the casino, three picketers videotaped her for about 5 minutes and harassed her with anti-Semitic statements. The judge found that the actual purpose of the videotaping was to coerce and intimidate the employee and to cause her to fear retribution for crossing the picket line. The Board affirmed, holding that use of video cameras, when accompanied by abusive remarks from the pickets, tended to re-

strain or coerce the targeted employee in violation of Section 8(b)(1)(A).<sup>28</sup>

Although *Randell* left open the issue of whether pickets' use of video cameras alone might violate the Act, in the instant case, the picketers not only used video cameras but also aimed these cameras at vehicle license plates and, on one occasion, used a bullhorn to announce the license plate numbers. Although there may be legitimate reasons for use of video cameras by unions at picket lines, no valid reason has been offered for the need to record the license number of each car entering and exiting the plant at shift change times. In my view, a replacement employee entering and exiting the plant in such a car would tend to believe that the Union might utilize the license plate number in order to punish employees who did not honor the picket line. In *Auto Workers Local 695 (T. B. Wood's)*, the Board affirmed Administrative Law Judge Richard A. Scully's finding that when the union gave the appearance of photographing or videotaping the license plates and occupants of vehicles as the vehicles crossed the picket line, while the union president gave the impression that he was recording the license plate numbers of these vehicles, replacement employees would reasonably tend to fear retribution.

*T. B. Wood's* is virtually indistinguishable from the facts herein.<sup>29</sup> The Board did not explicitly overrule *T. B. Wood's* in *Randell*; rather, it expressly left open the issue of legitimate uses of video cameras by pickets. Accordingly, I find the practice of videotaping the replacement employees and their vehicles and vehicle license plates as they entered and exited the production facility violates Section 8(b)(1)(A).<sup>30</sup>

<sup>28</sup> See also, *Mike Yurosek & Son, Inc.*, 292 NLRB 1074 (1989)(union videotaping accompanied by statement that, "we've got it on film, we know who you guys are . . . after the Union wins the election some of you may not be here," reasonably leads to fear of future reprisals and is therefore objectionable conduct). In *Randell*, the Board specifically affirmed *Mike Yurosek*. *Randell*, *supra*, 328 NLRB No. 153, slip op. at 3. Somewhat similarly, in *Dover Corp.*, the Board held that pickets' questioning of a nonstriking employee, coupled with taking her picture and noting her license plate number was calculated to instill fear of retribution. 311 NLRB at 1330 and 1336 (1993).

<sup>29</sup> *Cf.*, *Interstate Cigar*, *supra*, 256 NLRB at 500-501. In that case, Administrative Law Judge Raymond P. Green found that no violation occurred when pickets photographed people and wrote down license numbers, because if it occurred at all, it happened only on a few isolated occasions and was carried out by persons unknown. Judge Green further opined that in any event, photographing of employees by pickets, or recording license plate numbers is not by itself violative of Section 8(b)(1)(A). Relying on *Dover Corp.*, Judge Green noted that it is only when such conduct occurs in conjunction with other actions indicating that a union might react adversely to employees who honor a picket line that such conduct becomes coercive. In adopting Judge Green's findings, the Board did not disavow his statements regarding *Dover*.

<sup>30</sup> *Cf.*, *Teamsters Local 812 (Pepsi-Cola Newburgh)*, 304 NLRB 111, 112 (1991)(Board noted that judge's finding regarding use of video camera to record replacement employees' license plate numbers was limited to a finding of the unlawfulness of recording license plate numbers and did not extend to use of video camera with telephoto lens to photograph employees entering and exiting plant).

<sup>24</sup> However, I do not find that remarks made by striking employees away from the picket line may be attributed to the Union. On one occasion when Feebeck was accompanying replacement employees who were housed at the nearby town of Soledad, California, an unidentified striker who was videotaping stated to Feebeck, "I [or we] have your [license] number now." On another occasion, when Feebeck was also leaving with replacement workers from Soledad to report to BVP, Feebeck overheard a similar remark made by an unidentified striker to a replacement worker who was driving a car about one or two cars ahead of Feebeck. Around the end of July or the first week of August while Feebeck was at the East Ranch, striker Kenny Gallegos yelled to Feebeck, "Phil, I have your license number." Feebeck could not recall whether Gallegos had a video camera or binoculars with him at the time this remark was made. There is no evidence that these comments were instigated, supported, ratified, or encouraged by the Union and there is no evidence that anyone other than Feebeck, a member of management, heard them.

<sup>25</sup> *Boilermakers 696 (Kargard Co.)*, 196 NLRB 645, 647-648 (1972).

<sup>26</sup> *Randell Warehouse of Arizona*, *supra*, 328 NLRB No. 153, slip op. at 5.

<sup>27</sup> *Id.*, slip op. at 3 fn. 9.



## CONCLUSION OF LAW

By videotaping replacement employees and their vehicles and vehicle license plates as the replacement employees entered and exited the production facility, the Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusion of law and on the entire record, I issue the following recommended<sup>31</sup>

## ORDER

The Respondent, General Teamsters, Warehousemen and Helpers Union, Local 890, affiliated with International Brotherhood of Teamsters, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from videotaping replacement employees and their vehicles and vehicle license plates as the replacement employees enter and exit the production facility and in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its union office copies of the attached notice marked "Appendix."<sup>32</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's au-

thorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since mid-July 1999.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by Basic Vegetable Products, L.P., if willing, at all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, May 24, 2000, San Francisco, California

## APPENDIX

## NOTICE TO MEMBERS

## POSTED BY ORDER OF THE

## NATIONAL LABOR RELATIONS BOARD

## An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT videotape replacement employees and their vehicles and vehicle license plates as the replacement employees enter and exit the production facility

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

GENERAL TEAMSTERS, WAREHOUSEMEN AND  
HELPERS UNION, LOCAL 890, AFFILIATED WITH  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
AFL-CIO

<sup>31</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>32</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."